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Hinckley & Bosworth  
Borough Council

**Bill Cullen** MBA (ISM), BA(Hons) MRTPI  
*Chief Executive*

Date: 11 October 2017

**To: Members of the Planning Committee**

Mr R Ward (Chairman)	Mrs J Kirby
Mr BE Sutton (Vice-Chairman)	Mr C Ladkin
Mr PS Bessant	Mr RB Roberts
Mr CW Boothby	Mrs H Smith
Mrs MA Cook	Mrs MJ Surtees
Mrs GAW Cope	Miss DM Taylor
Mr WJ Crooks	Ms BM Witherford
Mrs L Hodgkins	Ms AV Wright
Mr E Hollick	

Copy to all other Members of the Council

(other recipients for information)

Dear Councillor,

Please see overleaf a Supplementary Agenda for the meeting of the **PLANNING COMMITTEE** on **TUESDAY, 10 OCTOBER 2017** at **6.30 pm**.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R Owen'.

Rebecca Owen  
Democratic Services Officer

**SUPPLEMENTARY AGENDA**

7. 17/00848/OUT - OAKVIEW, PECKLETON LANE, DESFORD

Application for residential development for two detached dwellings (Outline – access only).

Late items:

**Recommendation:-**

Amend reason for refusal as follows:

1. The proposal would result in unsustainable residential development in the designated countryside outside the settlement boundary of Desford. The development would also introduce a urbanised built form within an otherwise open rural area. The proposal would fail to complement or enhance the intrinsic value, beauty, undeveloped rural character of the countryside. The proposal is therefore contrary to Policies DM1, DM4 and DM10 of the Site Allocations and Development Management Policies DPD (2016).

8. 15/00441/FUL - LAND SOUTH OF CHAPEL FIELDS LIVERY STABLES, CHAPEL LANE, WITHERLEY

Application for erection of 10 dwellings and associated access.

Late items:

**Consultations:-**

An additional seven representations have been received since the publication of the agenda. These all object to the proposal, additional points raised which are not identified in the committee report are:

- 1) Planning permission has been previously refused for an adjacent development due to poor access onto Atterton Lane
- 2) Parish Rooms are booked daily at a minimum of 5 days per week and is the social hub of Witherley, questions have been raised to the practicality of the day to day use and maintenance of the proposed parking area

Leicestershire County Council (Highways) have raised no objections to the scheme subject to three conditions it is also reiterated that the proposals do not conform to adoptable standards and therefore the area currently beyond the existing adopted Highway boundary will remain private'.

Witherley Parish Council have raised additional concerns with regard to the proposed parking layout in addition to their previous comments. The parish state that the current parking provision for the Parish Room car park is 8-10 vehicles (located alongside the building), however many events attract 20+ cars. Therefore the revised plan does nothing to mitigate the lack of impact on road safety and congestion caused by the lack of alternative off-road parking provision for uses of the Parish Room.

**Appraisal:-**

Policy DM1 of the Site Allocations and Development Management Policies DPD (SADMP) states that planning applications that accord with the policies in the Local Plan will be approved without delay, unless material considerations indicate otherwise. For the reasons outlined in the committee report the proposal is considered to be unsustainable and is therefore contrary to Policy DM1 of the SADMP. The reason for refusal has been amended to include the policy reference to DM1.

Comments have been received with regards to a previous refusal of planning permission within the near vicinity, however no details have been provided as to which application this was. Each site is assessed on its own merits and therefore one planning application cannot be easily compared with another.

The concerns raised with the proposed parking area for the Parish Rooms are discussed in paragraph 8.29 of the committee report and the additional comments received does not alter this assessment.

**Recommendation:-**

Amend reason for refusal 1 to read:

1. The proposal would result in unsustainable residential development in the designated countryside outside the settlement boundary of Witherley. The proposal would fail to complement or enhance the intrinsic value, beauty, undeveloped rural character of the countryside and the rural setting of the village. The proposal is therefore contrary to Policy 12 of the Core Strategy (2009) and Policies DM1, DM4 and DM10 of the Site Allocations and Development Management Policies DPD (2016).

9. 17/00634/FUL - DUNLOP LIMITED, STATION ROAD, BAGWORTH

Application for demolition of existing industrial unit and erection of 61 dwellings.

Late items:

**Introduction:-**

Submission of a Phase I and II Site Appraisal and further discussions have been undertaken with regards to contamination on the site.

Additional consultation responses have been received.

An amended house type plan has been submitted.

**Consultations:-**

Environmental Health (Pollution) – no objection subject to conditions

County Councillor P Bedford – Objects to the application due to the lack of provision of contributions towards infrastructure.

**Appraisal:-**

Design and impact upon the character of the area

An amended plan for the design of house type P113 has been submitted. The plan removes the proposed corbelling detail to the eaves and replaces it with barge boards. Although the finish of the amended design is not as high quality as the originally submitted, the design and appearance of the dwelling would be considered acceptable and will complement the area. The proposed development would still be in accordance with Policy DM10 of the SADMP and condition 2 should be updated to reflect the submission of the amended plan.

#### Contamination

An additional Phase I and II Site Appraisal has been submitted. The report demonstrates that there are no identifiable contaminants on the site at this stage other than asbestos, landfill gas monitoring is being undertaken and will continue. The applicant has stressed the need to progress with demolition of the existing buildings as soon as possible and that sufficient information has been submitted to allow safe demolition of the building. Following further discussion it has been agreed with the Environmental Health Officer that further land contamination investigation is acceptable post demolition. However, a Demolition Traffic Management Plan and Asbestos Removal Method Statement are required prior to demolition. Condition 4 should be updated to allow demolition prior to further investigation and the additional details required prior to demolition should be secured through additional conditions. The proposed development would still secure appropriate remediation of contaminated land in accordance with Policy DM7 of the SADMP.

#### Planning obligations and viability

An additional consultation response has been received from County Councillor Bedford commenting that the application should be refused as it does not deliver contributions towards infrastructure required in the village and the proposed development would therefore be to the detriment of the village. The balance between the harm and benefits of the scheme with regards to planning obligations has been adequately assessed through paragraphs 8.66-8.72 of the case officer's committee report.

**Recommendation:-** Approve subject to conditions as set out in paragraph 11.4 of the case officer's committee report and the following amended conditions:

- 2) The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans:

70170 D00 rev A – Site Location Plan (received on 23 June 2017)  
70170 DO1 rev T – Site Layout (received on 25 September 2017)  
70170 D10 rev D – House Type 1A (received on 29 August 2017)  
70170 D11 rev B – House Type P113 (received on 4 October 2017)  
70170 D12 rev A – House Type P131 (received on 29 August 2017)  
70170 D13 rev A – House Type P133 (received on 29 August 2017)  
70170 D14 rev A – House Type 3A (received on 29 August 2017)

**Reason:** To ensure a satisfactory impact of the development to accord with Policy DM1 of the adopted Site Allocations and Development Management Policies DPD.

- 4) No development approved by this permission, excluding demolition, shall be commenced until a scheme for the investigation of any potential land contamination on the site has been submitted to and agreed in writing by the Local Planning Authority which shall include details of how any contamination shall be dealt with. The approved scheme shall be implemented in accordance with the

agreed details and any remediation works so approved shall be carried out prior to the site first being occupied.

**Reason:** To ensure appropriate remediation of contaminated land to accord with Policy DM7 of the Site Allocations and Development Management Policies DPD.

- 23) Prior to commencement of any development hereby permitted, including demolition, a Demolition Traffic Management Plan shall be submitted to and approved in writing by the Local Planning Authority. Demolition works shall be carried out in accordance with the approved plan.

**Reason:** To ensure appropriate remediation of contaminated land to accord with Policy DM7 of the Site Allocations and Development Management Policies DPD.

- 24) Prior to commencement of any development hereby permitted, including demolition, an Asbestos Removal Method Statement shall be submitted to and approved in writing by the Local Planning Authority. All asbestos shall be removed from the site in accordance with the approved statement.

**Reason:** To ensure appropriate remediation of contaminated land to accord with Policy DM7 of the Site Allocations and Development Management Policies DPD.

10. 17/00606/CONDIT - THE OLD RECTORY NURSERY, 93 SHILTON ROAD, BARWELL

Application for variation of condition 3 of planning permission 15/00611/COU to increase the number of children permitted from 42 to 64.

Late items:

**Consultations:-**

A full 14 day reconsultation was carried out on the amended site layout and parking.

Barwell Parish Council raise additional objections in respect of the site and building being inadequate for additional children, no suitable emergency exit, blocked bus stop during drop off and pick up times.

Six further letters of representation have been received from six separate addresses. The letters received raise the same concerns as previously as well as:

- 1) Blocking of the bus stop
- 2) Nursery already oversubscribed and overcrowding within the building

**Appraisal:-**

All letters of representations and concerns raised through the reconsultation and the initial consultation have been addressed in the officer's report.

Concerns have arisen regarding the blocking of the nearby bus stop during drop off and picking up. The nearest bus stop is located approximately 30 metres from the entrance to the nursery and is situated on the opposite side of the road to the application site. Therefore it is considered that the any on street parking as a result of the application would be situated closer to the site and would not impact upon the existing bus stop given the distance to the site and the fact any users of the site would have to cross the road.

Concerns have arisen regarding potential overcrowding of the building and the site as a

whole being inadequate for the additional children proposed with no suitable exits from the premises. However these issues are not material planning considerations in the determination of this application and should any issues arise then this will be covered through Ofsted and Leicestershire County Council Children's and Young People's Service.

11. 17/00776/FUL - 7 HUNTERS WALK, WITHERLEY, ATHERSTONE

Application for erection of timber post and wire fence adjacent to Kennel Lane (resubmission of 17/00310/FUL).

Late items:

**Consultations:-**

Four further letters of representation were received raising the same concerns as previously.

HBBC Drainage provided comments which can be summarised as follows:

- 1) The planting of a new native hedgerow at the top of the bank should not affect the infiltration capacity of the drainage ditch.
- 2) It should be noted that responsibility for maintenance of the drainage ditch will transfer with any change of land ownership, unless other arrangement for maintenance of the ditch are put in place.

**Appraisal:-**

All letters of public letters of representation and concerns raised have been addressed in the officer's report.

It is assessed that the comments by HBBC Drainage demonstrate that the erection of the timber post and wire fence with the planting of native hedgerow in the ditch which is located to the rear of no's 3, 4, 7 and 8 Hunters Walk would not affect the capacity of the drainage ditch to act as a storm soak away area which was a concern expressed by several objectors.

The second point raised by HBBC Drainage which raises the issue of the need to maintain the land following the granting of any permission is addressed by Condition 3 of the Officer's report.

13. 17/00734/OUT - LAND ADJACENT TO DALEBROOK FARM, LEICESTER ROAD, EARL SHILTON

Application for residential development up to 49 dwellings (Outline – all matters reserved).

Late items:

**Introduction:-**

Further consultation responses have been received.

Further assessment of the principle of development of residential development is considered below.

**Consultations:-**

Environment Agency – object to the application as submitted because the applicant has

not supplied adequate information to demonstrate that the risks of pollution posed to surface water quality can be safely managed.

Leicestershire County Council (Highways) – The Applicant has failed to demonstrate the impact of the proposed development, such that if it were permitted could result in the unsafe and unsatisfactory operation of the surrounding highway network.

Leicestershire County Council (Ecology) – Whilst some of the site has been developed, the development may impact on areas of grassland and hedgerow and are within close proximity to a pond and watercourse. Surveys should be submitted to ensure no adverse impact on features of nature conservation.

Some consultation responses are outstanding with the consultation period due to expire on 19 October 2017.

### **Appraisal:-**

#### Impact upon highway safety

Leicestershire County Council (Highways) (LHA) has provided written confirmation of their objection to the proposed development commenting that: The LHA is aware that the site has previous planning history and that the site has extant planning approval for 20 caravan pitches which shall not be occupied by persons other than gypsies and travellers as defined in Annex 1: Glossary to the 'Planning policy for travellers sites', published by the Department for Communities and Local Government. In the absence of any supporting technical documentation, the LHA does not accept that this extant planning permission sufficiently demonstrates that in the future, vehicle movements associated with a 49 dwelling development will not impact on the safe operation of the highway. Therefore, the principle of a 49 dwelling residential development being acceptable in highway terms in this location has not been adequately demonstrated.

The proposal is considered to be contrary to Policy DM17 of the SADMP. The potential adverse impact on the safe operation of the highway should be reflected in an updated reason for refusal.

#### Ecology

Leicestershire County Council (Ecology) has commented that although some of the site has been developed there is potential to impact further on grassland and hedgerows which may be used for habitats and foraging for badgers and bats. Additionally, the site is within close proximity to a pond and watercourse which may be habitats for great crested newts, otters, water vole and white-clawed crayfish.

No ecological surveys were undertaken and submitted for the previous applications on the site. A large proportion of the site has been hard surfaced and therefore the impact on grassland is limited. The development may impact on some hedgerows although the majority could be retained which would be subject to detailed consideration at the reserved matters stage.

The development would not directly impact on water features and therefore consideration relates primarily to exclusion during construction and future phases which could be adequately dealt with through mitigation measures.

As this application is for outline planning permission without layout for consideration and no specific number of dwellings, any features of natural and ecological importance could

be retained which would be for consideration at reserved matters stage and ecological reports could be secured through planning conditions.

In this instance, it is considered that the proposed development would not have an adverse impact on features of nature and ecological conservation. Subject to conditions, the proposed development would accord with Policy DM6 of the SADMP.

#### Foul drainage

The Environment Agency has objected to the development because the applicant has not supplied adequate information to demonstrate the means of disposal of foul sewage which may pose an unacceptable risk of causing a detrimental impact to surface water quality. The EA has identified that the previous application for this site referred to a sewage treatment plant but no permit has been sought and there has been a pollution incident report which identifies no proper drainage is on-site.

The existing use of the site is unrelated to the proposed development and therefore the existing pollution incident report cannot be considered to impact on the assessment of this application. As this application is for outline planning permission without layout for consideration and no specific number of dwellings, the siting of dwellings and appropriate drainage could be achieved through consideration at the reserved matters stage. It is considered that the lack of information with regards to foul sewage disposal at this stage would not justify a reason for refusal.

#### Flood risk

Policy DM7 of the SADMP seeks to ensure that the development doesn't create or exacerbate flooding by being located away from areas of flood risk unless adequately mitigated against in line with National Policy. Paragraph 101 of the NPPF states that the aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. A sequential approach should be used in areas known to be at risk from any form of flooding.

The Environment Agency has raised no objection to the proposal with regards to flood risk as the indicative plan identifies the dwellings as being located outside flood zones 2 and 3 and subject to a condition that the ground levels are not raised which would reduce the capacity of the flood plain. The EA has commented that a small proportion of the application site lies in Flood Zones 2 and 3 and that the Local Planning Authority should therefore be satisfied that the site is sequentially preferable from a flood risk perspective. Leicestershire County Council (Drainage) as the Lead Local Flood Authority has not provided comments on the revised flood risk assessment.

In this instance, the submitted flood risk assessment confirms that areas of the site are within flood zones 2 and 3. The indicative plan identifies that the dwellings would be primarily sited within flood zone 1 although layout is a reserved matter and therefore not for consideration at this stage. Notwithstanding the indicative plan, as part of the site falls within flood zones 2 and 3, a sequential test must be undertaken. Additionally the access to the site is not identified, however it is clear where it would be to serve the development and a large element of this would be within flood zones 2 and 3.

The Planning Practice Guidance states that for individual planning applications where there has been no sequential testing of the allocations in the development plan, or where the use of the site being proposed is not in accordance with the development plan, the



area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the type of development proposed. When applying the Sequential Test, a pragmatic approach on the availability of alternatives should be taken.

In this instance, the sequential test for available alternative sites should be focused around the sub-regional centre, including the settlements of Hinckley, Barwell, Earl Shilton and Burbage, as this is where residential development to meet the need of the Borough is primarily focused. Additionally, given the scale of the proposal for up to 49 dwellings, the sub-regional centre is the most capable of accommodating this scale of development.

The Council are able to demonstrate a five year land supply of deliverable housing sites. There are several alternative sites, including allocations, within and surrounding the sub-regional centre with planning permission and allocated for development within flood zone 1 which will deliver residential development of a comparable scale to the proposed development. Given the availability of alternative sites which are suitable for residential development, the proposed development fails to pass the sequential test. The proposed development is therefore contrary to Paragraph 101 of the NPPF and Policy DM7 of the SADMP which should constitute an additional reason for refusal.

#### Established principle of residential development

Further to the details set out in paragraphs 8.9 to 8.12 of the case officer's committee report with regards to the established principle of residential development and the relationship to the proposed development, it is important to note that the case officer's committee report (application ref: 13/00395/COU) for the change of use of the site to a gypsy and traveller site concluded that:

'Based on the identified shortfall in pitch provision and need for the site, which has been confirmed by the County Councils Gypsy Liaison Officer and the requirement to provide Gypsy & Traveller Sites as identified within Policy 18 of the Core Strategy and national planning policy for Traveller sites, the 'need' for the site and therefore the principle of development is considered to be acceptable. Further, the criteria listed within the national guidance and Policy 18 is considered to have been met. The site is considered to be a reasonable distance from local services and infrastructure, will be compatible with the scale of the nearest service centres, will result in no adverse impacts in terms of highway safety or residential amenity, will sympathetically assimilate into the surroundings, and will provide a safe and healthy environment to residents. Accordingly the proposal is considered acceptable and will be recommended for approval subject to conditions.'

It is evident from the previous committee report that when establishing the suitability of the site for a gypsy and traveller use, the case officer gave significant weight to the social benefits of fulfilling the identified need for sites. It is considered that the approved use as a gypsy and traveller site is not comparable to the current scheme being determined and is not a material consideration which outweighs the harm caused by the proposed scheme as detailed below.

#### Planning balance

The NPPF is a material consideration in determining applications. Paragraph 12 of the NPPF states that it does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise.

Policy DM1 – Presumption in Favour of Sustainable Development of the Site Allocations and Development Management Policies DPD (SADMP) states that planning applications that accord with the policies in the Local Plan will be approved without delay, unless material considerations indicate otherwise.

Paragraph 7 of the NPPF identifies that there are three dimensions to sustainable development: economic, social and environmental. These roles are mutually dependant and therefore to achieve sustainable development they should be considered together. The assessment of the three dimensions relative to this proposal is as follows:

**Economic** – The construction of up to 49 dwellings would provide some benefits to the local economy through the creation of jobs and demand for services and materials for the construction of the development itself and from the future occupation of the development supporting businesses in the wider area.

**Social** – The scheme would provide a contribution to the overall housing supply within the Borough. The Council are able to demonstrate a five year housing land supply of deliverable sites within settlement boundaries and allocations which have been identified as the most sustainable locations for development through the local plan process. Therefore, less weight should be given to the benefits of sites such as the proposed which are less sustainable with regards to access to facilities and services.

**Environmental** – The current proposal for 49 residential dwellings will be clearly visible from all aspects of the site and would introduce an urbanising form to this area of the countryside. The settlement boundary is 0.5 miles away and therefore the development would not be read against the existing settlement and would be clearly independent and separate to Earl Shilton. It is considered that the impact of the built form on the intrinsic open nature of the countryside in this location would have significant adverse environmental impacts.

Having regard to the above, it is considered that there are limited benefits to the development which would not outweigh the identified harm. The development would cause harm by way of contradicting the spatial strategy and vision for development as set out in the Core Strategy and SADMP and would cause harm to the character of the open countryside. The scheme for residential development has different impacts to that of a gypsy and traveller site and therefore an individual assessment must be undertaken for the proposed development notwithstanding the extant permission for the use of the site for gypsy and traveller pitches.

It is therefore concluded that the development is not considered to be sustainable development and is contrary to Policy DM1 of the SAMDP.

#### Consultation

An additional consultation period was undertaken following the submission of a flood risk assessment. The consultation period expires on 19.10.2017 and the majority of responses have been received although some are outstanding. Provided that no new material planning considerations are raised in the outstanding consultation responses due by 19<sup>th</sup>, the application should be determined in accordance with the resolution of the planning committee.

**Recommendation:-** Refuse planning permission for the following reasons, subject to no new material planning considerations being raised in the outstanding consultation responses by the 19 October 2017:

1. The proposal would result in residential development in the designated countryside outside the settlement boundary of Earl Shilton. The proposal would fail to complement or enhance the intrinsic value, beauty, undeveloped rural character of the countryside and the rural setting. The proposal is therefore contrary Policies DM4 and DM10 of the Site Allocations and Development Management Policies DPD (2016).
2. The proposed development is located within flood zones 2 and 3 as defined by the Environment Agency. The sequential test has been undertaken which has confirmed that there are other reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The proposed development is contrary to Policy DM7 of the Site Allocations and Development Management Policies DPD (2016) and Paragraph 101 of the National Planning Policy Framework
3. Insufficient information has been submitted to enable the impact of the development on the road network to be assessed and demonstrate that the development would not result in any significant impacts upon the highways and transportation network and any necessary mitigation measures. In the absence of such information the application is contrary to Policy DM17 of the Site Allocations and Development Management Policies DPD (2016).

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